

1 Q. And then you have a handwritten note,
2 1/19/04, Bill blessing. Is that your handwriting?

3 A. That is.

4 Q. And then there's a -- it looks like
5 a transmission report, 1/14/04 it starts, and is this
6 your writing; these notes?

7 A. Yes.

8 Q. And that has to do with Laidlaw;
9 is that right?

10 A. Sir, I -- you have it in front of
11 me --

12 Q. Okay.

13 A. -- I mean in front of you. That's
14 correct.

15 Q. The Bryant property was Laidlaw.
16 Does this have anything to do with Harry Curtis?

17 A. No. This -- well, I can't answer
18 that. It has to do specifically with 1107 Laidlaw.

19 Q. And then there are notes --

20 A. That's the same document.

21 Q. The same document? All right.
22 That's the original. And then there are notes,
23 S. Bryant -- 1107 Laidlaw, dated January 7th, '98.
24 Is that your writing?

1 A. That is.

2 Q. Does that have to do with Laidlaw?

3 A. Correct.

4 Q. Does that have anything to do with
5 Curtis, as far as you remember?

6 A. It specifically has to do with
7 Laidlaw, but in the sense that there's commonality
8 between the two, it has to do with Curtis as well.

9 Q. All right. We'll talk about that.
10 And then there's an e-mail, January 23rd, from Bill
11 Blessing to you, right?

12 A. (Nods head.)

13 Q. Contract to purchase 1107 Laidlaw?

14 A. Well, let me interrupt you for a
15 second. All of the documents before this tab have to
16 do with Laidlaw.

17 Q. Oh. Okay. So there's a sticky tab
18 in this notebook. Is this what -- oh. It says 1966
19 Fairfax, right?

20 A. There is a document there, right.

21 Q. Okay. So everything in this document
22 before that sticky tab has to do with Laidlaw, and
23 not Fairfax, except to the extent that there's
24 commonality?

1 A. well, and the statute has to do with
2 whatever.

3 Q. All right. And then there are notes
4 dated 8/2/99. Are these your notes?

5 A. They are.

6 Q. And then you have the contract to
7 purchase that's at issue in this case, right?

8 A. Correct.

9 Q. A check to Harry and Patricia Curtis
10 for 9,576.32, and then you've got -- who wrote that
11 245 down there?

12 A. I did.

13 Q. Or is that 295?

14 A. 295.

15 Q. Is that the 295 that we talked about
16 before?

17 A. Yes.

18 Q. And then you have checks to Stephen
19 Kurlansky, Hamilton County Treasurer. You have a
20 Meckstroth receipt, and we talked about that, right?

21 A. Correct.

22 Q. You have the settlement statement.

23 A. It's the one we talked about.

24 Q. All right. You have a check from

1 Curtis, to Bigelow Properties, dated 8/28/99, right?

2 A. Correct. That's a check to
3 Curtis -- Bigelow Properties.

4 Q. Yeah, is that -- did I misspeak?

5 A. I didn't hear you.

6 Q. Okay. And then you have another
7 check dated 9/28/99 to Bigelow Properties, from
8 Curtis, correct?

9 A. Correct.

10 Q. You have the forcible entry and
11 detainer order, right?

12 A. Correct.

13 Q. All right. You have the land
14 installment contract.

15 A. That's all that -- that says land
16 contract.

17 Q. That says land -- what does it say
18 above that on the sticky tab?

19 A. Well, it's an old sticky, and it says
20 Mr. Lerner.

21 Q. Oh, Mr. Lerner land contract.

22 A. No, it's Mr. Lerner -- somebody had
23 sent something to me, and I had re-used the sticky.

24 Q. Okay. And then we have a copy of

1 your deposition transcript in the Bigelow versus
2 Burbrink case, right?

3 A. Correct.

4 Q. And you've got a sticky tab here with
5 page 22, where somebody highlighted a paragraph in
6 red. Was that you?

7 A. It was.

8 Q. Okay. Is this the extent of the
9 documents that you've reviewed reference Harry Curtis?

10 A. Yes.

11 Q. This binder?

12 A. Yes.

13 Q. And the e-mail that we were talking
14 about earlier is in that binder?

15 A. Correct; the one that I vaguely
16 remembered, and, as I reviewed it, it didn't have
17 anything substantive in it, anyway. It was basically
18 scheduling.

19 Q. Have you conducted real estate
20 closings as a closing attorney?

21 A. Many times.

22 Q. Ballpark it for me.

23 A. Thousands. I can't --

24 Q. Thousands?

1 A. -- I can't answer that.

2 Q. And so you consider yourself an
3 expert in real estate transactions, do you?

4 A. I do.

5 Q. Now, I read in the testimony you gave
6 in the Burbrink case that the field of litigation that
7 you're primarily involved in is commercial litigation?

8 A. That's correct.

9 Q. Are you distinguishing that from real
10 estate litigation?

11 A. Most of the commercial litigation
12 involves real estate or real estate mortgages or
13 leases. That's mostly what I do.

14 Q. What percentage of your practice do
15 you think involves real estate litigation?

16 A. Eighty/ninety.

17 Q. How many lawsuits do you have
18 currently pending; real estate litigation lawsuits?

19 A. A half a dozen, personally.

20 Q. Yeah, that's what I mean, personally.
21 Has that number over the last -- since you've been of
22 counsel -- and how many years was that; five or six
23 years?

24 A. I went of counsel as of July 1, 19 --

1 let's see; 2000.

2 Q. 2000?

3 A. 2000. And I have attempted to wind
4 my practice down gradually from that point, so that's
5 a smaller number than it would have been --

6 Q. Yeah, that was my next question.

7 Okay. Now, you reviewed your deposition transcript
8 from the Burbrink case, right?

9 A. I read it.

10 Q. Have you reviewed any deposition
11 transcripts that were taken in this case?

12 A. No.

13 Q. None?

14 A. Correct.

15 Q. Have you reviewed the pleadings?

16 A. No.

17 Q. Have you reviewed any photographs of
18 1966 Fairfax?

19 A. I have reviewed no documents, other
20 than the ones we've discussed.

21 Q. All right. Other than those Ohio
22 Revised Code sections that are included in that binder
23 that you have in front of you, have you done any
24 research?

1 A. No.

2 Q. Have you made any notes that aren't
3 produced in that binder?

4 A. Not that I can recall.

5 Q. All right. Have you kept time
6 records referencing your involvement in this case?

7 A. Yes.

8 Q. Where are those?

9 A. In my computer.

10 Q. How much time have you spent on this
11 case?

12 A. I don't know.

13 Q. Can you approximate it for me?

14 A. Five or six hours; maybe less, maybe
15 more. I really don't know.

16 Q. Okay. Again, I'm going to -- well,
17 you can retrieve those time records, can't you?

18 A. Sure.

19 Q. Will you produce those to
20 Mr. Blessing?

21 THE WITNESS: (To Mr. Blessing)
22 Mr. Blessing, is that agreeable?

23 MR. BLESSING: Certainly. We cooperate.

24 A. Sure.

1 Q. Now, you indicated that you believed
2 that you had two meetings with Mr. Blessing about the
3 case?

4 A. Other than a brief social meeting
5 this morning, where we didn't have any substantive
6 discussion, I had exactly two meetings.

7 Q. All right. And I'm not trying to
8 ask you a question that I already asked you, but
9 Mr. Schwantes...

10 A. ...was present at neither one.

11 Q. All right. And did you ever meet
12 with him individually --

13 A. Not about this specific --

14 Q. -- Mr. Schwantes?

15 A. -- not about this case.

16 Q. What opinions are you going to offer
17 at trial?

18 A. It depends on what questions I'm
19 asked.

20 Q. Okay. Well, have you been asked to
21 offer opinions at trial?

22 A. Mr. Blessing and I have discussed
23 a series of transactions of which the Curtis matter
24 was one, and I have given him certain opinions with

1 respect to that series of transactions that relate to
2 the curtis matter.

3 Q. All right. So I want to be clear
4 on this. As we sit here right now, are you telling
5 me that you don't know what opinions you're going to
6 offer at trial?

7 A. I don't know exactly what questions
8 I'll be asked. I know generally the subject matter,
9 and I know what my opinions are.

10 Q. Okay. So you have formed some
11 opinions in this case?

12 A. Yes.

13 Q. Okay. I want you to tell me all the
14 opinions you've formed in this case.

15 A. Well, I'll do my best. Based on my
16 understanding of the facts, Mr. Bigelow and several
17 of his colleagues were involved in a series of
18 transactions of which the Curtis transaction was
19 one. In that series of transactions, an emissary of
20 Mr. Bigelow contacted the owner of distressed real
21 estate -- and, by distressed, I mean property that was
22 either a mortgage foreclosure or a tax foreclosure or
23 some similar configuration -- and with respect to the
24 transactions, of which I'm aware, there was relatively

1 a small amount of debt liability, which was a lien
2 on the property compared to the total value of the
3 property, and, as a consequence, there was substantial
4 equity in each of these transactions.

5 It's my understanding that Mr. Bigelow's
6 colleagues offered help to the property owner who was
7 in distress as a result of the potential loss of the
8 property by virtue of foreclose, mortgage, or tax.
9 In this case it's tax, and in most -- in this case
10 it's a tax foreclosure --

11 Q. Right.

12 A. -- and in most cases it's a mortgage
13 foreclosure. The theme that I observed in the three
14 transactions that I looked at -- which is consistent
15 with what Mr. Blessing has described to me in other
16 transactions -- is that there was a relatively small
17 payment made to the property owner -- small relative
18 to the value of the property -- in consideration for
19 which the property owner conveyed the property to
20 Mr. Bigelow, or agreed to convey the property to
21 Mr. Bigelow, or one of his colleagues -- perhaps
22 always Mr. Bigelow; I don't recall.

23 In the Curtis case, it was Bigelow
24 Trustee, which may or may not be Mr. Bigelow --

1 I can't speak to that -- with the understanding that
2 there would be some arrangement, or the reacquisition
3 of the property by the property owner for a price for
4 value that was still considerably less than the full
5 fair market value of the property.

6 I interpret these transactions to be
7 essentially financing transactions which I've seen
8 many times to bail out a property owner who's in a
9 distressed foreclosure situation, and afford him a
10 window of relief to maintain possession and reacquire
11 title of the property over a relatively brief period
12 of time -- a year or two -- in the Curtis case, two
13 years. Unfortunately, in the case as I've observed,
14 that didn't happen.

15 Q. What didn't happen?

16 A. The property owner was not able
17 to reacquire the property, but, in fact, lost the
18 property to Mr. Curtis for a relatively nominal --
19 excuse me -- to Mr. Bigelow --

20 Q. Right.

21 A. -- for a relatively nominal amount
22 compared to the value of the property, and Mr. Bigelow
23 and his colleagues were able to achieve substantial
24 profits from these transactions at the expense of

1 these owners, excluding Mr. and Mrs. Curtis. Those
2 are my opinions.

3 Q. All right. Are those all your
4 opinions?

5 A. Those are all that occur to me in
6 response to your question.

7 Q. All right. Well, now is the time.
8 I get one chance.

9 A. I understand, and, as I said earlier,
10 I'll respond to the questions that I'm asked, and
11 those are the -- that's the subject matter that we've
12 discussed.

13 Q. Okay. I want to be clear on this.
14 I'm asking you today to tell me all the opinions that
15 you've formed in this case. Did you just do that?

16 A. I believe I have.

17 Q. All right. As you sit here today,
18 can you think of any other opinions that you've got,
19 other than what you just related?

20 A. Well, I can -- I mean, there is some
21 finite details that lead up to those conclusions, but
22 those are my conclusions.

23 Q. Right. A lot of these -- a lot
24 of what you just related to me were facts and your

1 understandings --

2 A. That's correct.

3 Q. -- which is fine. That's the basis
4 for expert opinion, frequently, all right? I'll talk
5 to you about the facts underlying your opinion, but I
6 want to focus now on what opinions that you've formed.

7 A. And I've just given you that, to the
8 best of my ability.

9 Q. All right. And the best, as you sit
10 here today, you've given me all your opinions?

11 A. The summation is that as I observed
12 these transactions as the documents were presented
13 to me and as Mr. Blessing has described them to me,
14 there's a series of transactions which are intended
15 to capture the equity or substantial value from a
16 property owner by deceiving him, or her, or them into
17 believing that they were being helped with a temporary
18 refinance-type of transaction. That's the essence of
19 my opinion.

20 Q. I'm sorry. I don't want to ask you
21 to restate it.

22 MR. LEWIS: Could you just read that
23 answer back?

24 (The court reporter reads back the answer.)

1 BY MR. LEWIS:

2 Q. Now, these colleagues that you talked
3 about, who are these colleagues of Mr. Bigelow?

4 A. There were two that I can recall.

5 One is Christine -- well, help me with the last name.

6 Q. So, the Christine that you talked
7 about earlier?

8 A. Correct.

9 Q. Okay.

10 A. And the other is a gentleman, whose
11 last name I don't recall. Is it Menafee (phonetic)?

12 Q. Marfisi.

13 A. Marfisi? Thank you.

14 Q. Was Marfisi involved in the Curtis
15 transaction?

16 A. I don't believe so.

17 Q. So in terms of the colleagues that
18 you referred to reference the Curtis transaction, it
19 was Christine?

20 A. Well, I might refer to Mr. Meckstroth
21 as well.

22 Q. Okay. And are you critical of
23 Mr. Meckstroth's role in this?

24 A. Define critical.

1 Q. Do you find anything -- well, let's
2 start with this: Did Mr. Meckstroth do anything
3 unlawful?

4 A. I don't know.

5 Q. So you have no opinion on that?

6 A. Well, I don't know -- I do have an
7 opinion. I don't know -- well, when you use the word
8 "unlawful", I think he did some things that were very
9 questionable. I think he facilitated -- in a number
10 of ways, he facilitated the scheme that I just
11 described.

12 Q. Did Mr. Meckstroth, in your opinion,
13 violate any state or federal statute with his conduct?

14 A. I don't know.

15 Q. Did Mr. Meckstroth violate any
16 provision of the Ohio common law?

17 A. I don't know the answer to that.
18 I think -- what I said before was, I think -- I can
19 tell you what I think he did that facilitated the
20 scheme.

21 Q. We'll get that to.

22 A. All right. But as I sit here, it
23 does not occur to me that he violated any specific
24 common law -- that occurs to me.

1 Q. All right.

2 A. He violated some statutory law.

3 Q. He did?

4 A. Yeah.

5 Q. Well, I thought I just asked you
6 that.

7 A. No, you asked me if he committed a
8 crime, and I don't --

9 Q. No, no, no. No, I didn't say that.
10 In your opinion, did Mr. Meckstroth violate any state
11 or federal statute?

12 A. Yes.

13 Q. What?

14 A. He violated the sections of the Ohio
15 Revised Code, that I printed out.

16 Q. Those land installment contract
17 statutes?

18 A. Right.

19 Q. Which one, and how did he violate it?

20 A. He drafted, and on the date of the
21 closing on August 25th, if I recall correctly, he
22 charged the Curtises \$295 for a land contract. The
23 statute requires that -- and I'm referring now to
24 5313.02(A) -- Every installment contract shall be

1 executed in duplicate, and a copy of the contract
2 shall be provided to the vendor and the vendee, and
3 the contract shall contain at least the following
4 provisions.

5 The contract that he drafted -- and for
6 which he charged Mr. and Mrs. Curtis -- contains
7 those provisions, but it wasn't executed by either
8 the vendor or the vendee, and it's required to be
9 recorded, and it wasn't recorded.

10 Based on what I've observed, it's my
11 opinion that Meckstroth intentionally did not
12 facilitate that contract being executed, but based
13 on what I understand to be the facts, I think the
14 Curtises thought that they had achieved the land
15 contract, and I think that's consistent with their
16 purchase contract.

17 Q. Are you saying that Mr. Meckstroth
18 prevented the execution of that land contract?

19 A. I'm saying that I think that based
20 on what I understand to be the facts, he had a
21 professional duty and a statutory duty to see that
22 it was executed.

23 Q. All right. Have you looked at
24 Mr. Meckstroth's file?

1 A. No.

2 Q. Are you aware of what discussions
3 took place at the closing about when and if the land
4 contract was going to be executed?

5 A. No.

6 Q. And are you aware of whether anybody
7 told Mr. Meckstroth that the land contract was going
8 to be executed and recorded later?

9 A. No.

10 Q. Are you aware of the term "second
11 position" -- reference banks, financing companies,
12 liens, mortgages?

13 A. Are you talking about junior lien
14 holder?

15 Q. In the context of -- right; financing
16 and filing mortgages.

17 A. Sure.

18 Q. You know what second position does.

19 A. Sure.

20 Q. Okay. You know what that means,
21 don't you?

22 A. I know what a junior lien holder is.

23 Q. All right. I want you to assume for
24 me that this land contract would have been signed at

1 the closing and recorded either that day or the day
2 after.

3 A. or within 20 days. That's what the
4 statute requires.

5 Q. Twenty days?

6 A. Yeah.

7 Q. okay. well, let's say that happened.
8 Let's say it happened -- just assume for me that it
9 would have happened before Mr. Bigelow would have
10 financed the transaction by which the Curtises got
11 paid. Are you with me?

12 A. Yes.

13 Q. And you know that Mr. Bigelow did
14 obtain financing, right?

15 A. Yes. I was told that, yes.

16 Q. Right. That's your understanding,
17 right?

18 A. Right.

19 Q. If the land contract would have been
20 signed and recorded before Mr. Bigelow went to the
21 bank for financing -- are you with me?

22 A. Yes.

23 Q. -- would that have affected, in your
24 opinion, the bank's willingness to make the loan to

1 Mr. Bigelow?

2 A. Not if it were done properly.

3 Q. And what would have needed to
4 happen?

5 A. A subordination.

6 Q. A subordination?

7 A. Right.

8 Q. And who has to do that?

9 A. Well, I would assume that Meckstroth
10 would have done that since he seemed to be attempting
11 to represent both parties in this transaction.

12 Q. Uh-huh. And describe subordination
13 for me. How does that come about?

14 A. Well, it can come about in a variety
15 of ways, but in this context, it would have been
16 appropriate, in my opinion, to have drawn a
17 subordination document, or to have inserted within
18 the land contract itself a subordination feature,
19 a very -- a simple paragraph would have done it.

20 Q. All right. And then who has to agree
21 to subordination?

22 A. The equitable owner, which in that
23 case would have been Mr. and Mrs. Curtis. What
24 happened at this closing, which, in my opinion,

1 should not have happened, but what happened at this
2 closing --

3 Q. we'll get to that, what happened at
4 the closing. I want to talk about subordination right
5 now.

6 A. Well, I'm trying to respond to your
7 question.

8 Q. who has to agree to subordination?

9 MR. BLESSING: Didn't he answer that?

10 THE WITNESS: I did answer that.

11 Q. Did anybody else, other than the
12 Curtises?

13 A. No.

14 Q. All right. And then in terms of
15 putting that mechanism in place and arranging the
16 subordination, you would expect that Mr. Meckstroth
17 should have done that?

18 A. Absolutely.

19 Q. Okay. That's not something you would
20 expect a client to understand, would you?

21 A. It depends on the client. I've had
22 unsophisticated clients, and I've had sophisticated
23 clients.

24 Q. All right. You think that that's

1 the attorney's obligation, though; Meckstroth's
2 obligation?

3 A. Yes. And the reason I think that
4 is because the difference between executing that
5 land contract at the closing and not executing it,
6 is that going into the closing the Curtises owned
7 the property and they had an expectation that they
8 would still have some ownership coming out of the
9 closing -- an equitable ownership, but an ownership
10 -- and they didn't, because they transferred title
11 without obtaining any interest. The land contract
12 was the vehicle that was -- the function of that
13 vehicle was for the Curtises to retain an equity in
14 a property.

15 Q. And why do you think Mr. Meckstroth
16 didn't get those signatures on the land contract and
17 make arrangements to record it? What motive did he
18 have to do that?

19 A. Now you're asking me to speculate,
20 and I'm glad to do that if you wish, but you earlier
21 instructed me not to.

22 Q. What's your understanding of why he
23 didn't do that?

24 A. I have formed a speculation about why

1 he wouldn't have done that, but I don't have a factual
2 understanding.

3 Q. And you don't -- well, have you read
4 Mr. Curtis's deposition testimony about what happened
5 at the closing?

6 A. You asked me earlier --

7 Q. Right.

8 A. -- and I answered in the negative.

9 Q. Do you know whether Mr. Curtis ever
10 asked that the land contract be signed?

11 A. No.

12 Q. Do you know whether Mr. Curtis ever
13 asked that the land contract be recorded?

14 A. No.

15 Q. Do you know whether Mr. Curtis
16 brought the subject of the land contract up at the
17 closing?

18 A. No.

19 Q. Do you know who requested that a land
20 contract be prepared?

21 A. No.

22 Q. You understand, don't you, that the
23 contract to purchase in this case talks about a lease
24 option to buy?

1 A. I understand -- I read that.

2 Q. A lease option?

3 A. I read that.

4 Q. All right. And a lease with an
5 option to buy is different than a land contract, isn't
6 it?

7 A. Yes.

8 Q. Do you have an understanding as to
9 why the parties started talking about a land contract
10 as opposed to a lease option?

11 A. I assume that Mr. and Mrs. Curtis are
12 not sophisticated people, which is partly why I assume
13 that Mr. Meckstroth had an obligation to see to their
14 interest. The other reason why I assume that is
15 because he charged them \$295, so he was representing
16 both of them.

17 Q. All right. Is it your opinion that
18 by Meckstroth charging the Curtises \$295, that he
19 became their attorney?

20 A. To some extent, yes.

21 Q. To what extent?

22 A. I think that he had an obligation
23 to see to it that their interest was protected,
24 consistent with the purchase agreement. They walked

1 away from that closing with neither -- apparently
2 with neither an executed land contract nor an executed
3 lease option, either one of which would to some
4 extent, protected their equity.

5 Q. okay. They did walk away from the
6 closing, we can agree, with an executed purchase
7 contract, correct?

8 MR. BLESSING: From the closing?

9 A. They walked into the closing with an
10 executed purchase contract.

11 Q. Right. And after they walked out
12 of the closing, they still had an executed purchase
13 contract, didn't they?

14 A. There is a survival feature in the
15 purchase contract.

16 Q. Right. Yeah, and that survival
17 feature, even though there wouldn't be lease option
18 language in the deed, the survival feature means
19 that that would be enforceable against Mr. Bigelow,
20 correct?

21 A. That's a gray area. I think --
22 in theory, I think you're correct --

23 Q. Right.

24 A. -- but in practice, I think it's

1 iffy.

2 Q. All right. Well, let's talk about
3 the law, the legal theory. In your opinion, is that
4 provision in the purchase contract enforceable that
5 the language in the purchase contract would survive
6 the closing and be applicable to Mr. Bigelow in terms
7 of lease option to buy?

8 A. If this would be Curtis and Bigelow
9 Trustee, the answer is yes.

10 Q. All right.

11 A. vis-a-vis third parties, the answer
12 is no.

13 Q. All right. So irrespective of this
14 land contract issue, Mr. Curtis, pursuant to the
15 purchase contract, had an enforceable option to
16 purchase, didn't he?

17 A. I told you that I think that's iffy.
18 In legal theory, he did. But he walked out of that
19 closing with a lot of things that the contract
20 provided that he didn't get.

21 Q. Well, why are you telling me it's
22 iffy?

23 A. Because, my experience suggests that
24 he wouldn't be able to enforce it -- clearly, he

1 wouldn't be able to enforce that against any third
2 party, and as soon as Mr. Bigelow financed the
3 property, there was an encumbrance on it that exceeded
4 the purchase -- I assume it exceeded the purchase
5 price, I don't know. Part of the re-purchase
6 agreement was, what, \$37,000?

7 Q. Uh-huh.

8 A. And as a practical matter, he
9 wouldn't have been able to achieve -- he wouldn't have
10 been able to maintain his equity.

11 Q. Okay. Would he have been able to
12 enforce the option to buy against Mr. Bigelow?

13 A. Only if Mr. Bigelow -- by Mr.
14 Bigelow, are you talking about Mr. Bigelow Trustee?

15 Q. Yeah.

16 A. Only if Mr. Bigelow still retained
17 the property.

18 Q. Okay. Assuming that he still
19 retained the property, would he have been able to
20 enforce the option to buy against Mr. Bigelow?

21 A. If Mr. Bigelow had financed
22 the property in the meantime, it would have been
23 problematic whether Mr. Bigelow could have satisfied
24 that obligation.

1 Q. Would Mr. Curtis have been able to
2 enforce his option to buy against Mr. Bigelow?

3 A. In legal theory, I've answered yes.

4 Q. Thank you.

5 A. And I also told you that, based on
6 my experience and practicality, it's very iffy.

7 Q. Now, you also mentioned in your
8 opinions that Mr. Curtis --

9 A. By the way, your concern was that the
10 fact that a would-be lender would be in a secondary
11 position would have prevented secondary financing --
12 would have prevented primary financing. That's true
13 on your theory of an enforceable option to -- a lease
14 option as well.

15 Q. Well, I thought you told me that
16 wasn't a problem. It could be subordinated?

17 A. No. I say based upon your hypothesis
18 that Mr. Curtis could enforce the contract, lease
19 option provision, the fact that legally he could would
20 have put the -- it would be the mortgage lender in a
21 secondary position as well.

22 Q. Uh-huh.

23 A. The only way that you could acquire
24 mortgage financing would have been to conceal from the

1 tender the existence of the outstanding equity of the
2 Curtises.

3 Q. Well, that would be Mr. Bigelow's
4 problem, though. Let's assume that Mr. Curtis wanted
5 to exercise his option to buy for 37,000, all right,
6 and Bigelow had refinanced the property, right?

7 A. Yeah.

8 Q. If Curtis exercises his option to
9 purchase, isn't Bigelow obligated to sell to Curtis,
10 and Bigelow's obligated to satisfy the mortgage?

11 A. Absolutely, legally.

12 Q. Okay. So if that scenario occurs,
13 then Mr. Curtis has got a legally enforceable option
14 to buy, and Bigelow has the problem, correct?

15 A. No. Mr. Curtis has the problem,
16 because, based on my experience, I think it's unlikely
17 that that could be achieved.

18 Q. Why?

19 A. Because I think -- well, I think
20 that, first of all, I don't know who Bigelow Trustee
21 is. I don't know whether he has any assets. He would
22 need sufficient assets to retire the prior mortgage.
23 He would have needed to have deceived the mortgage
24 lender in the first place in concealing the existence